IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 745 of 2007
With
CIVIL APPLICATION No. 2059 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
PATEL VITHALBHAI BABADAS & 3 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 173 of the Motor Vehicles Act, 1988, the Insurance Company of the vehicle involved in the accident which took place on 17.2.1997 has challenged the judgment and award dated 21.1.2006 of the Motor Accident Claims Tribunal (Aux.), Sabarkantha at Himmatnagar in MAC Petition No.277 of 1997 awarding compensation of Rs.2,75,000/- to the parents of Jitendra Kumar who died at the age of 18 years in the above motor vehicle accident.

2. On 17.2.1997, the deceased was standing on the road waiting for transport vehicle for going to the diamond polishing factory where he was employed. The truck insured by the appellant-Insurance Company knocked down the deceased and caused fatal injuries. The parents filed the claim petition for compensation of Rs.5 lakhs on the basis that the deceased was getting salary income of Rs.1500/- per month from the diamond polishing factory and was also earning Rs.4000/- per month by supplying milk to the local dairy. In support of the claim, the parents produced the salary certificate issued by Dasrathbhai S Patel, owner of the diamond polishing factory and also produced the certificate issued by the local milk dairy indicating that in the deceased was supplying milk worth Rs.4000/- every month. The Tribunal, however, did not rely upon the said evidence on the ground that no witness was examine either the salary certificate or the certificate issued by the local dairy. However, the Tribunal fixed the monthly income

of the deceased at Rs.1400/- per month by purporting to take into consideration the rates of minimum wags and then assessed the prospective future income of the deceased at Rs.2100/- per month. Deducting one-third therefrom for personal expenses of the deceased, the Tribunal assessed dependency benefit at Rs.1400/- per month i.e. Rs.16,800/- per annum. Adopting the multiplier of 15 years, the Tribunal computed compensation for loss of dependency benefit at Rs.2,52,000/-. Adding thereto, Rs.20,000/- towards the conventional amount for loss to the estate and Rs.3,000/- for funeral expenses, the Tribunal made the award for total compensation of Rs.2,75,000/-.

3. The Insurance Company is in appeal before us mainly challenging the quantum of compensation. The Tribunal has recorded in the judgment under appeal that the Insurance Company had not given any application for permission under Section 170 of the Act, but still the Tribunal had permitted the learned advocate for the Insurance Company to cross-examine the claimants' witnesses but nothing adverse was brought out in their cross-examination.

4. Mr Hemant Shah for the appellant-Insurance Company has, however, produced a certified copy of the application Exh.26 for seeking permission under Section 170 of the Act and submitted that since the application was already submitted, merely because the Tribunal did not pass any order thereon, the Insurance Company cannot be denied right to challenge

the quantum of compensation.

5. We find from the judgment under appeal that though the driver of the vehicle involved in the accident remained absent and the Tribunal proceeded ex-parte against him, respondent No.2 – owner of the vehicle did appear before the Tribunal through his advocate. In that view of the matter, it cannot be said that the owner of the vehicle did not contest the proceedings at all. In absence of a specific order of the Tribunal, the Insurance Company cannot be permitted to challenge the quantum of compensation. However, even proceeding on the basis that in the facts of the case, the appellant-Insurance Company was entitled to get permission under Section 170 of the Act, we have considered the submissions of the learned counsel for the appellant-Insurance Company on demurer.

6. The learned counsel for the Insurance Company submitted that the Tribunal erred in deducting only one-third amount as the personal expenses of the deceased even though the deceased was an unmarried young man aged 18 years. Secondly, it is submitted that the claimants are parents aged 60 years and 57 years on the date of the accident and, therefore, the multiplier of 15 years adopted by the Tribunal is very much on the higher side. It is submitted that the multiplier could have been only five years.

7. The submissions would at first blush look attractive but before considering these submissions it is necessary to examine the finding given by the Tribunal regarding assessment of income of the deceased on the date of the accident and his prospective future income. The claimants, as parents of the deceased boy aged 18 years, had produced the salary certificate issued by the owner of the diamond factory and also the certificate issued by the local milk dairy. In the facts and circumstances of the case, we are of the view that merely because the authors of those certificates were not examined by the claimants as witnesses, the Tribunal ought not to have discarded the contents of those certificates altogether. The Court could have taken judicial notice of the fact that when the claimants themselves aged 60 and 57 yeas are residing in a village in Sabarkantha district, their son aged about 18 years would be engaged in some avocation. The salary of Rs.1500/- which the parents claimed that their son was earning was not such princely sum that such grave doubts should have been expressed by the Tribunal about the genuineness of the income. So also while the income from supplying milk to the local dairy, would not be uniform every month, some consideration ought to have been given to the fact that the deceased was supplying milk to the local dairy. We also find it strange that even after purporting to take into consideration the rates of minimum wages (the Tribunal has not indicated any figure, but the current rates of minimum wages are

Rs.90 per day), the Tribunal certainly erred in assessing the monthly income of the deceased at Rs.1400/- per month and, therefore, the prospective future income at Rs.2100/- per month. In the facts and circumstances of the case, we are of the view that prospective future income of the deceased would be required to be assessed at about Rs.4,000/- per month.

8. Coming to the submission regarding deduction of the amount for personal expenses of the deceased, ordinarily in case where the deceased is a married man, one-third amount is deducted for personal expenses of the deceased. However, in case where the deceased is an unmarried young man, deduction of a particular amount for personal expenses of the deceased cannot be put in a strait-jacket formula as held by the Apex Court in **Municipal Corpn. of Greater Bombay vs. Laxman Iyer, 2003 (8) SCC 731.** Such deduction should be made having regard to the facts and circumstances of each case including the age, occupation and income of the parents of the deceased, whether the claimants have no other son and no other source of income.

9. These factors would also be relevant for the purpose of adopting the appropriate multiplier. In the facts of the case, the claimants are parents of the deceased, aged 60 and 57 years on the date of the accident. The father of the deceased is an agricultural labourer and the mother of the deceased

aged 57 years is an agriculturist and house wife. It would, therefore, be clear that even after the deceased were to get married, the parents would have to rely substantially on the income of the deceased for their maintenance and, therefore, the deceased could have contributed at least 50% of his income as dependency benefit for the maintenance of his old parents.

10. We are, therefore, of the view that at least Rs.2000/- as dependency benefit would be available to the claimants i.e. Rs.24,000/- per annum and adopting the multiplier of even 10 years, the compensation for loss of dependency benefit would be Rs.2,40,000/-. Adding thereto, Rs.25,000/- as conventional amount for loss to the estate and Rs.5,000/- for funeral expenses, the amount of compensation would work out to Rs.2,70,000/-. Taking into consideration the rate of interest being offered by the nationalized banks these days, we have been awarding interest at the rate of 9% per annum. The Tribunal has, however, awarded interest only at the rate of 7.5% per annum.

11. In this view of the matter also, we are of the view that the award of compensation for Rs.2,75,000/- with interest at the rate of 7.5% p.a. is certainly within the brackets and the award under challenge does not call for any interference whatsoever.

12. The appeal is, therefore, summarily

dismissed.

The amount deposited by the appellant before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

13. Since the appeal is dismissed, the stay application is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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